

19-03-CD
APOC Staff
v.
INSURPAC of Alaska

Presented by:

Thomas R. Lucas
Campaign Disclosure Coordinator

BEFORE THE ALASKA PUBLIC OFFICES COMMISSION

APOC Staff,)	
)	
Complainant,)	
)	
vs.)	Case No. 19-03-CD
)	
INSURPAC of Alaska,)	
)	
Respondent.)	

CONSENT AGREEMENT

I. SUMMARY OF PROCEEDINGS LEADING TO CONSENT AGREEMENT

A. Parties

The parties to this Consent Agreement are Respondent INSURPAC of Alaska (INSURPAC) and the Alaska Public Offices Commission Staff (“APOC Staff” or “Staff”).

B. Complaint

This Consent Agreement is entered into regarding the complaint (19-03-CD) filed by APOC Staff on July 29, 2019, against INSURPAC.¹ The complaint alleges that INSURPAC:

- Failed to Register for years 2006 through 2017;
 - Failed to file required campaign disclosure reports between 2005 and 2017;
- and
- Received an excess contribuion from an individual in 2015 and from another individual in 2018.²

C. Intent of the Agreement

This Consent Agreement intends to resolve all pending matters related to 19-03-CD. The Parties understand that this Consent Agreement is not effective unless and until it is approved by the Alaska Public Offices Commission.

¹ Ex. 1, Complaint 19-03-CD.

² *Id.*

II. FACTS AND LEGAL CONCLUSIONS

INSURPAC is a political action committee whose purpose is to promote the interests of the insurance-buying public and advance the interest of independent insurance agents. INSURPAC had been a registered group since at least 2001. But, beginning in 2006, INSURPAC stopped registering each year and stopped filing campaign disclosure reports in 2005.

In 2003, a new treasurer began duties for INSURPAC. This individual remained as the treasurer until August, 2018 when he unexpectedly and suddenly passed away. In early November 2018, INSURPAC was able to gain access to its checking account and check register formerly maintained by its treasurer. The newly appointed treasurer, Katie Eddy, contacted APOC on November 5, 2018, because she could not find records of APOC reporting. Ms. Eddy was told that APOC could find no record of any registrations between 2006 and present, and no campaign disclosure reports between 2005 and present. APOC advised that she should register INSURPAC as soon as possible; and should file a campaign disclosure report showing all contributions received and expenditures made between 2005 and present.

INSURPAC filed its 2018 registration on November 7, 2018; and began work on preparing a campaign disclosure report showing all financial activity since the last report, filed on February 14, 2005. On February 4, 2019, INSURPAC filed a 2018 year end report that showed its beginning cash on hand as of February 1, 2005; and all contributions received and expenditures made between February 2, 2005 and February 1, 2019.³

In reporting its contributions and expenditures from 2005 forward, INSURPAC discovered that it had received a \$1,000 contribution from an individual on October 16, 2015; and a \$850 contribution from another individual on October 12, 2018.

INSURPAC recognizes that the group itself is responsible for insuring compliance with the law, including timely registration and reporting; and that the Commission will not

³ INSURPAC provided APOC staff with concurrent bank records that are consistent with its report.

accept reliance on an individual, even the treasurer, to insure compliance and to timely file registrations and reports as a mitigating factor to reduce a civil penalty.⁴

Thus, INSURPAC self-reported that:

1. It failed to register between 2006 and 2017;⁵
2. It failed to file campaign disclosure reports between 2005 and 2017;⁶
3. It received an excess contribution from an individual in 2015 and from another individual in 2018;

A. Failure to Register

From 2005 and through 2017 INSURPAC held surplus contributions at the end of each campaign year. A group that does not plan to remain active must report the disbursement of all campaign money no later than 15 days after the disbursement.⁷ A group that holds surplus campaign contributions and has not disbursed them is an “ongoing group”.⁸ An “ongoing group” is required to register each year.⁹ Because INSURPAC held surplus funds that were not disbursed, it was an “ongoing group” from 2005 through 2017 who failed to register for those years in violation of 2 AAC 50.290(a).

B. Failure to File Campaign Disclosure Reports

Between 2005 and 2017 INSURPAC failed to file any campaign disclosure reports.¹⁰ A group is required to make a full report of the date and amount of all contributions and expenditures made.¹¹ Every group is required to file a year end report

⁴ Although not relevant to whether or not the violations herein occurred, APOC staff concedes that there appears to be no evidence to conclude that staff ever contacted INSURPAC about its delinquencies after 2006.

⁵ AS 15.13.380(b) provides a complaint may be filed within 5 years of the date of a violation; in this matter it precludes consideration of any violations prior to July 29, 2014.

⁶ *Id.*

⁷ 2 AAC 50.384(c).

⁸ 2 AAC 50.405(7).

⁹ 2 AAC 50.290(a).

¹⁰ Because INSURPAC was not involved in any elections (by making a contribution to or an expenditure in support of a candidate) during this period, only year end reports were required.

¹¹ AS 15.13.040(b)(3).

whether or not it has been involved in any particular election that year; and, whether or not any contributions were received or expenditures made.¹² Because INSURPAC failed to file a year end report for the years 2005 through 2017, it violated AS 15.13.040(b) and AS 15.13.110(a)(4).

C. Receipt of Excess Contributions Without Timely Return or Forfeiture

During calendar years 2015 and 2018, INSURPAC received contributions from individuals in excess of the \$500. Campaign disclosure law provides that a group that receives and accepts a prohibited contribution, shall immediately, upon discovery that it is prohibited, return it to the contributor.¹³ If a campaign determines that a contribution is prohibited it must be returned to the contributor no later than 10 days after receipt.¹⁴ Here, INSURPAC received two contributions in excess of the annual limit and did not timely return or forfeit the excess amounts in violation of AS 15.13.070(b), AS 15.13.114 and 2 AAC 50.266(a).

III. MAXIMUM POTENTIAL CIVIL PENALTIES

The maximum civil penalty for a late-filed registration or year end report is \$50 per day for each day the delinquency continues.¹⁵ The maximum civil penalty for a violation of AS 15.13 that is not a registration or report violation is \$50 per day for each day the violation continues.¹⁶

In calculating the potential maximum penalties for the violations, staff has used the date that the violations were cured to toll the penalty accrual period. All violations in this matter began accruing penalties as of the dates and in the daily amounts indicated below. The total maximum penalty as detailed below is **\$448,950**.

¹² AS 15.13.110(a)(4).

¹³ AS 15.13.114.

¹⁴ 2 AAC 50.266(a).

¹⁵ AS 15.13.390(a).

¹⁶ *Ibid.*

A. Failure to Register

AS 15.13.050; 2 AAC 50.290(a)¹⁷

Registration	Due Date	Date Cured	Penalty Days	Penalty Rate	Maximum
2014	2/1/2015	2/4/2019	1464	\$50	\$73,200
2015	12/2/2015	2/4/2019	1,160	\$50	\$58,000
2016	2/1/2017	2/4/2019	733	\$50	\$36,650
2017	2/1/2018	2/4/2019	368	\$50	\$18,400
Total					<u>\$186,250</u>

B. Failure to File Campaign Disclosure Reports

AS 15.13.040; AS 15.13.110

Report	Due Date	Date Cured	Penalty Days	Penalty Rate	Maximum
2014 YE	2/15/2015	2/4/2019	1,450	\$50	\$72,500
2015 YE	2/15/2016	2/4/2019	1,085	\$50	\$54,250
2016 YE	2/15/2017	2/4/2019	719	\$50	\$35,950
2017 YE	2/15/2018	2/4/2019	354	\$50	\$17,700
Total					<u>\$180,400</u>

C. Failure to Return Excess Contributions

AS 15.13.070(b), AS 15.13.114; 2 AAC 50.266(a)

Contribution	Due Date	Date Cured	Penalty Days	Penalty Rate	Maximum
10/16/2015	10/26/2015	7/26/2019	1369	\$50	\$68,450
10/12/2018	10/22/2018	7/26/2019	277	\$50	\$13,850
Total					<u>\$82,300</u>

IV. MITIGATION

In reaching this agreement, the parties have considered and agree that mitigating factors exist that would allow for a substantial reduction of the maximum penalties, but not a complete waiver.

Mitigation criteria would allow reduction of more than 50 percent up to a complete waiver when the penalty is significantly greater and out of proportion to the degree of harm

¹⁷ For purposes of this Consent Agreement, staff considers that the violations were cured as of the date when all financial activity connected to the un-filed registrations was first reported – February 4, 2019.

to the public.¹⁸ Furthermore, in this case, INSURPAC self-reported its violations as soon as its new treasurer learned that the previous treasurer had failed in his duties.

But, this was only the first step on INSURPAC's path to transparency. Because of the untimely death of its previous treasurer, INSURPAC had to first locate whatever records the previous treasurer had maintained. Some were found in his office, but the bulk of the records were not obtained until the past treasurer's widow found and mailed a 25 pound box of records to the new treasurer. Then began the process of reconciling electronic (going back only 8 years) and paper bank records with underlying records and notes to identify the date of each contribution, as well as the name, address, occupation and employer of each contributor. A similar process was required for each expenditure made before the report disclosing 14 years of activity could be filed.

INSURPAC then returned \$850 in excess contributions to its two contributors who went over the statutory limit of \$500 per calendar year.

The purpose of Alaska's campaign disclosure statutes is to ensure open and transparent campaigns; to provide the public with information to allow them to make informed choices when they vote; and to ensure that campaigns are accountable. Failing to register and report negates those efforts to promote transparency. Nevertheless, the maximum penalty of \$448,950 should not be upheld here.

First, because the maximum civil penalty is significantly out of proportion to the degree of harm suffered by the public.¹⁹ Next, because INSURPAC's new treasurer self-reported the violations as soon as she and INSURPAC became aware of them.²⁰ Finally because of INSURPAC's full cooperation and steadfast efforts to provide a complete and accurate accounting of each and every contribution received and expenditure made over a 14-year period.

¹⁸ 2 AAC 50.865(b)(6).

¹⁹ INSURPAC failed to timely report \$4,446 in contributions received and \$89.34 in bank fees during the period within the statute of limitations.

²⁰ Over the 14-year period of non-reporting, INSURPAC had completely fallen off APOC staff's radar. If not self reported, INSURPAC's violations may have remained undetected.

V. TERMS OF CONSENT AGREEMENT

APOC Staff and INSURPAC agree to a consent agreement in which:

1. The above facts and conclusions are acknowledged.
2. INSURPAC will pay a penalty of \$5,500 within 30 days of the date of approval of this agreement.²¹
3. INSURPAC agrees to comply with AS 15.13 and the regulations promulgated thereunder; and refrain from engaging in similar conduct whereby registrations and campaign disclosure reports are not timely filed and excess contributions are not timely returned.

The parties agree that this is an appropriate resolution and in the public interest to settle this matter rather than engaging in a protracted investigation and potential legal expenses.

Staff expended approximately 12 hours investigating this matter. Investigation costs are \$510. Staff does not recommend the imposition of investigation costs in this matter as it did not involve extensive investigation or any other pre-hearing discovery costs; and INSURPAC cooperated fully in resolving the issues presented.

²¹ This is a negotiated amount that exceeds the total dollar amount of contributions received and expenditures made during the statute of limitations period; and represents a 98.8% reduction from the maximum civil penalty – a reduction percentage in line with percentage reductions in similar cases. See, e.g. *APOC Staff v. Alaska Realtors Political Action Committee*, 18-05-CD (99% reduction).

This agreement is subject to approval by the Commission.

On behalf of Complainant APOC Staff:

Dated: 8/16/19

By: Heather B. Hebdon
Heather Hebdon, Executive Director
Alaska Public Offices Commission

On behalf of Respondent INSURPAC:

Dated: 8-16-19

By: John M. Sweeney
Name: John M. Sweeney
Title: President

I hereby certify that on this date, I caused a true and correct copy of the foregoing to be delivered as indicated to the following:

INSURPAC of Alaska 122 W. Rezanof Kodiak, Alaska 99615 john@sweeneyagency.com katie@p-wins.com	<input checked="" type="checkbox"/> Email <input checked="" type="checkbox"/> U. S. Mail
--	---

[Signature]
Law Office Assistant

8/16/19
Date



Alaska Public Offices Commission

COMPLAINT



FILING A COMPLAINT <i>To be accepted, complaint must include</i>	APOC LAWS ALLEGEDLY VIOLATED <i>Specify section of law or regulation</i>		APOC case name/number/date
1. Complainant's name + contact info 2. Respondent's name + contact info 3. Laws, regulations allegedly violated 4. Description of allegations 5. Basis of knowledge of alleged facts 6. Documentation to support allegations 7. Notarized signature of the complainant 8. Proof that complaint and all supporting documents were served on respondent	Campaign Disclosure Law Public Official Financial Disclosure Legislative Financial Disclosure Lobbying Regulation	<input checked="" type="checkbox"/> AS 15.13 <input checked="" type="checkbox"/> 2 AAC 50.250-405 <input type="checkbox"/> AS 39.50 <input type="checkbox"/> 2 AAC 50.680-799 <input type="checkbox"/> AS 24.60 <input type="checkbox"/> 2 AAC 50.680-799 <input type="checkbox"/> AS 24.45 <input type="checkbox"/> 2 AAC 50.550-590	ARRIVED 7/29/2019 APOC - ANCH PM/HC FAX ELE 19-03-CD

If complaint meets requirements for acceptance, APOC will investigate the allegations and notify the respondent of the right to respond. APOC will notify Complainant and Respondent when APOC accepts or rejects a complaint.

<input checked="" type="checkbox"/> APOC <input type="checkbox"/> Person <input type="checkbox"/> Party <input type="checkbox"/> Group	COMPLAINANT APOC Staff	RESPONDENT <i>Person or group allegedly violating law</i> <input type="checkbox"/> Person <input type="checkbox"/> Party <input checked="" type="checkbox"/> Group INSURPAC of Alaska
Address	221 E. Northern Lights Blvd., RM 128 Anchorage, Alaska 99508	122 W. Rezanof Kodiak, Alaska 99615
City / Zip		
Phone/Fax	(907) 276-4176/(907) 276-7018	(907) 772-3858
E-mail	apoc@alaska.gov	john@sweeneyagency.com

COMPLAINANT'S REPRESENTATIVE		RESPONDENT'S REPRESENTATIVE	
<i>If complainant or respondent is political party or group, list contact person. If complainant or respondent is represented by attorney, list name + contact info</i>			
Name/Title	Rachel Witty, Assistant Attorney General State of Alaska, Department of Law	Katie Eddy	
Address	1031 W. 4 th Avenue, suite 200 Anchorage, Alaska 99501	PO Box 529 Petersburg, Alaska 99833	
Phone/Fax	(907) 269-5100	(907) 772-3858	
E-mail	Rachel.witty@alaska.gov	katie@p-wins.com	

DESCRIPTION or SUMMARY of ALLEGED VIOLATION	Use extra pages if needed	<input checked="" type="checkbox"/> SUPPORTING DOCUMENTS – DESCRIBE:
Failure to register (2014-2017);		Complaint Memorandum
Failure to file campaign disclosure reports (2014-2017);		
Receipt of contributions in excess of statutory annual limits without timely return or forfeiture.		

PROOF of SERVICE ATTACHED: ☐ Fax – receipt confirmation ☐ Certified mail – signed receipt
☐ Process server – return of service ☒ E-mail – delivery/read receipt ☐ Other:

COMPLAINANT'S SWORN STATEMENT: To the best of my knowledge and belief, these statements are true

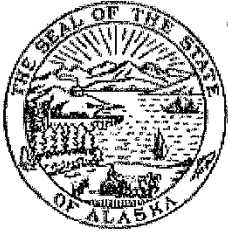
Signature T. Thomas R. Lucas Title Campaign Disclosure Officer Date 7/29/19

Subscribed and sworn to or affirmed by me at _____ on _____

Signature [Signature] Title Law Office Assistant Date 7/29/19

APOC COMPLAINTS, RESPONSES, INVESTIGATION REPORTS & COMMISSION DECISIONS ARE PUBLIC DOCUMENTS

APOC ANCHORAGE	APOC JUNEAU	APOC COMPLAINT PROCESS 2 AAC 50.450 - 476
2221 E. NORTHERN LIGHTS #128	240 MAIN STREET #500	FILING COMPLAINTS: 2AAC 50.870 ANSWERING COMPLAINTS: 2AAC 50.880
ANCHORAGE, AK 99508	P.O. BOX 110222	APOC CRITERIA for ACCEPTING COMPLAINTS: 2 AAC 50.870
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TOLL-FREE 800-478-4176	465-4864 / FAX 465-4832	RULES for REQUESTING EXPEDITED CONSIDERATION: AS15.13.380(c)
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THE STATE
of **ALASKA**
GOVERNOR MICHAEL J. DUNLEAVY

Department of Administration

ALASKA PUBLIC OFFICES COMMISSION

2221 E. Northern Lights Blvd., Rm. 128
Anchorage, AK 99508-4149
Main: 907.276.4176
Fax: 907.276.7018
www.doa.alaska.gov/apoc

TO: APOC Commissioners

DATE: July 29, 2019

FROM: Thomas R. Lucas, ^{TRV} Campaign Disclosure Coordinator

RE: INSURPAC of Alaska Violations of AS 15.13 Campaign Disclosure Laws

I. BACKGROUND

INSURPAC of Alaska (INSURPAC) has been a registered group since at least 2001.

INSURPAC has self-reported that:

1. It failed to register between 2006 and 2017;¹
2. It failed to file campaign disclosure reports between 2005 and 2017²;
3. It received an excess contribution from an individual in 2015 and from another individual in 2018.

II. ALLEGED VIOLATIONS

A. Failure to Register

From 2005 and through 2017 INSURPAC held surplus contributions at the end of each campaign year. A group that does not plan to remain active must report the disbursement of all campaign money no later than 15 days after the disbursement.³ A group that holds surplus campaign contributions and has not disbursed them is an “ongoing

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³ 2 AAC 50.384(c).

group”.⁴ An “ongoing group” is required to register each year.⁵ Because INSURPAC held surplus funds that were not disbursed, it was an “ongoing group” from 2005 through 2017 who failed to register for those years in violation of 2 AAC 50.290(a).

B. Failure to File Campaign Disclosure Reports

Between 2005 and 2017 INSURPAC failed to file any campaign disclosure reports. A group is required to make a full report of the date and amount of all contributions and expenditures made.⁶ Every group is required to file, at a minimum, a year end report whether or not it has been involved in any particular election that year; and, whether or not any contributions were received or expenditures made.⁷ INSURPAC failed to file year end reports for the years 2005 through 2017 in violation of AS 15.13.040(b) and AS 15.13.110(a)(4).

C. Receipt of Excess Contributions Without Timely Return or Forfeiture

During calendar years 2015 and 2018, INSURPAC received contributions from individuals in excess of the \$500 maximum and did not timely return or forfeit the excess amounts. In doing so, INSURPAC violated AS 15.13.070(b), AS 15.13.114 and 2 AAC 50.266(a).

⁴ 2 AAC 50.405(7).

⁵ 2 AAC 50.290(a).

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⁷ AS 15.13.110(a)(4).



THE STATE
of **ALASKA**
GOVERNOR BILL WALKER

Department of Administration

ALASKA PUBLIC OFFICES COMMISSION

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Main: 907.276.4176
Fax: 907.276.7018
www.doa.alaska.gov/apoc

August 30, 2018

Via Certified Mail and Email

INSURPAC of Alaska

Attn: John Sweeney

122 W. Rezanof

Kodiak, Alaska 99615

john@sweeneyagency.com

katie@p-wins.com

Re: Commission Meeting Notice

Dear Mr. Sweeney:

At its upcoming September meeting, the Commission will consider the matter of the Consent Agreement in Complaint 19-03-CD, *APOC Staff v. INSURPAC of Alaska*.

Currently, the matter is scheduled to be considered at 11:00 a.m. on Wednesday, September 18, 2019. The meeting will take place at the offices of the Alaska Public Offices Commission located at 2221 E. Northern Lights Boulevard, Room 128, in Anchorage, Alaska.

If you are unable to attend in person, or wish to participate telephonically, please contact our office so that we can provide you with the contact information.

If you do not attend the meeting or participate telephonically, staff will send you a letter and a final order notifying you of the Commission's decision. If you have any questions, please do not hesitate to contact me.

Sincerely,

ALASKA PUBLIC OFFICES COMMISSION

Thomas R. Lucas

Campaign Disclosure Coordinator

I hereby certify that on this date, I caused a true and correct copy of the foregoing to be delivered as indicated to the following:

INSURPAC of Alaska

Attn: John Sweeney

122 W. Rezanof

Kodiak, Alaska 99615

john@sweeneyagency.com

katie@p-wins.com



Email



Certified Mail

Law Office Assistant

8/30/2019

Date

9171-9690-0935-0218-4230-56

From: [Microsoft Outlook](#)
To: john@sweeneyagency.com; katie@p-wins.com
Subject: Relayed: Re: Commission Meeting Notice
Date: Friday, August 30, 2019 3:40:39 PM
Attachments: [Re Commission Meeting Notice.msg](#)

Delivery to these recipients or groups is complete, but no delivery notification was sent by the destination server:
john@sweeneyagency.com (john@sweeneyagency.com) <<mailto:john@sweeneyagency.com>>
katie@p-wins.com (katie@p-wins.com) <<mailto:katie@p-wins.com>>
Subject: Re: Commission Meeting Notice



Alaska Public Offices Commission

COMPLAINT



FILING A COMPLAINT <i>To be accepted, complaint must include</i>	APOC LAWS ALLEGEDLY VIOLATED <i>Specify section of law or regulation</i>		APOC case name/number/date
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E-mail	apoc@alaska.gov	john@sweeneyagency.com
COMPLAINANT'S REPRESENTATIVE		RESPONDENT'S REPRESENTATIVE

If complainant or respondent is political party or group, list contact person. If complainant or respondent is represented by attorney, list name + contact info

Name/Title	Rachel Witty, Assistant Attorney General State of Alaska, Department of Law	Katie Eddy
Address	1031 W. 4 th Avenue, suite 200 Anchorage, Alaska 99501	PO Box 529 Petersburg, Alaska 99833
Phone/Fax	(907) 269-5100	(907) 772-3858
E-mail	Rachel.witty@alaska.gov	katie@p-wins.com

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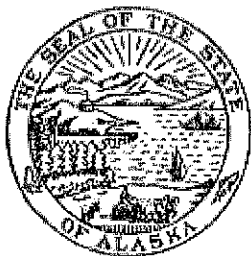
PROOF of SERVICE ATTACHED: ☐ Fax – receipt confirmation ☐ Certified mail – signed receipt
☐ Process server – return of service ☒ E-mail – delivery/read receipt ☐ Other:

COMPLAINANT'S SWORN STATEMENT: To the best of my knowledge and belief, these statements are true

Signature <i>Thomas R. Lucas</i>	Title Campaign Disclosure Officer	Date 7/29/19
Subscribed and sworn to or affirmed by me at _____ on _____		
Signature <i>[Signature]</i>	Title Law Office Assistant	Date 7/29/19

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B. Failure to File Campaign Disclosure Reports

Between 2005 and 2017 INSURPAC failed to file any campaign disclosure reports. A group is required to make a full report of the date and amount of all contributions and expenditures made.⁶ Every group is required to file, at a minimum, a year end report whether or not it has been involved in any particular election that year; and, whether or not any contributions were received or expenditures made.⁷ INSURPAC failed to file year end reports for the years 2005 through 2017 in violation of AS 15.13.040(b) and AS 15.13.110(a)(4).

C. Receipt of Excess Contributions Without Timely Return or Forfeiture

During calendar years 2015 and 2018, INSURPAC received contributions from individuals in excess of the \$500 maximum and did not timely return or forfeit the excess amounts. In doing so, INSURPAC violated AS 15.13.070(b), AS 15.13.114 and 2 AAC 50.266(a).

⁴ 2 AAC 50.405(7).

⁵ 2 AAC 50.290(a).

⁶ AS 15.13.040(b)(3).

⁷ AS 15.13.110(a)(4).